

Senate Study Bill 1326

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON OLIVE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulatory requirements involving boarding
2 homes and dependent adults and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2692SC 83
5 jp/rj/5

PAG LIN

1 1 Section 1. Section 10A.104, subsection 9, Code 2009, is
1 2 amended to read as follows:
1 3 9. Administer and enforce this chapter, and chapters 99B,
1 4 135B, 135C, 135H, 135J, 135O, 137C, 137D, and 137F.
1 5 Sec. 2. Section 91A.9, Code 2009, is amended by adding the
1 6 following new subsection:
1 7 NEW SUBSECTION. 3A. The commissioner shall, in
1 8 consultation with the United States department of labor,
1 9 develop a database of the employers in this state utilizing
1 10 special certificates issued by the United States secretary of
1 11 labor as authorized under 29 U.S.C. } 214, and shall maintain
1 12 the database.
1 13 Sec. 3. NEW SECTION. 1350.1 DEFINITIONS.
1 14 For the purposes of this chapter unless the context
1 15 otherwise requires:
1 16 1. "Boarding home" means a premises used by its owner or
1 17 lessee for the purpose of letting rooms for rental to three or
1 18 more persons not related within the third degree of
1 19 consanguinity to the owner or lessee where supervision or
1 20 assistance with activities of daily living is provided to such
1 21 persons. A boarding home does not include a facility, home,
1 22 or program otherwise subject to licensure or regulation under
1 23 chapter 135C, 231B, 231C, or 231D.
1 24 2. "Department" means the department of inspections and
1 25 appeals.
1 26 3. "Premises" means the same as defined in section 562A.6.
1 27 Sec. 4. NEW SECTION. 1350.2 REQUIRED REGISTRATION AND
1 28 REPORTING == RULES == PENALTY.
1 29 1. The owner or lessee of a boarding home in this state
1 30 shall register with and submit occupancy reports to the
1 31 department. The content of the required occupancy reports
1 32 shall include but is not limited to the number of individuals
1 33 living in the boarding home and the supervision or assistance
1 34 with activities of daily living being provided to the
1 35 individuals.
2 1 2. The department of inspections and appeals shall adopt
2 2 rules to administer this chapter in consultation with the
2 3 departments of human services and public safety.
2 4 3. a. The owner or lessee of a boarding home who fails to
2 5 register with the department or to timely submit occupancy
2 6 reports required by this section and rules adopted pursuant to
2 7 this chapter is subject to a civil penalty of not more than
2 8 five hundred dollars.
2 9 b. The department may reduce, alter, or waive a penalty
2 10 under paragraph "a" upon the owner's or lessee's showing of
2 11 good faith compliance with the department's request to
2 12 immediately cease and desist from conduct in violation of this
2 13 chapter.
2 14 Sec. 5. NEW SECTION. 1350.3 RESPONSE TO ALLEGATIONS.
2 15 1. If the department or other state agency receives an
2 16 allegation of a violation of this chapter by a boarding home
2 17 or an allegation regarding the care or safety of an individual
2 18 living in a boarding home, a coordinated, interagency approach

2 19 shall be used to respond to the allegation.

2 20 2. a. The interagency approach may involve a
2 21 multidisciplinary team consisting of employees of the
2 22 department of inspections and appeals, the department of human
2 23 services, the state fire marshal, and the division of criminal
2 24 investigation of the department of public safety, or other
2 25 local, state, and federal agencies.

2 26 b. The multidisciplinary team may consult with local,
2 27 state, and federal law enforcement agencies, first responders,
2 28 health and human services professionals, and governmental and
2 29 nongovernmental advocacy organizations, and other appropriate
2 30 persons.

2 31 3. The name of a person who files an allegation shall be
2 32 kept confidential and shall not be subject to discovery,
2 33 subpoena, or other means of legal compulsion for its release
2 34 to a person other than department employees or the members of
2 35 a multidisciplinary team involved in the investigation of the
3 1 allegation.

3 2 4. If the department or a multidisciplinary team has
3 3 probable cause to believe that a boarding home is in violation
3 4 of this chapter, or chapter 135C, 231B, 231C, or 231D or that
3 5 dependent adult abuse of any individual living in a boarding
3 6 home has occurred, and upon producing proper identification,
3 7 is denied entry to the boarding home or access to any
3 8 individual living in the boarding home for the purpose of
3 9 making an inspection or conducting an investigation, the
3 10 department or multidisciplinary team may, with the assistance
3 11 of the county attorney of the county in which the boarding
3 12 home is located, apply to the district court for an order
3 13 requiring the owner or lessee to permit entry to the boarding
3 14 home and access to the individuals living in the boarding
3 15 home.

3 16 Sec. 6. Section 235B.3, subsection 1, paragraph a, Code
3 17 2009, is amended to read as follows:

3 18 a. (1) The department shall receive dependent adult abuse
3 19 reports and shall collect, maintain, and disseminate the
3 20 reports by establishing a central registry for dependent adult
3 21 abuse information. The department shall evaluate the reports
3 22 expeditiously.

3 23 (2) However, the department of inspections and appeals is
3 24 solely responsible for the evaluation and disposition of
3 25 dependent adult abuse cases within facilities and programs
3 26 pursuant to chapter 235E and shall inform the department of
3 27 human services of such evaluations and dispositions pursuant
3 28 to section 235E.2.

3 29 (3) If, in the course of an assessment or evaluation of a
3 30 report of dependent adult abuse, the department of human
3 31 services or the department of inspections and appeals
3 32 determines the case involves wages, workplace safety, or other
3 33 labor and employment matters under the jurisdiction of the
3 34 division of labor services of the department of workforce
3 35 development, the relevant portions of the case shall be
4 1 referred to the division.

4 2 (4) If, in the course of an assessment or evaluation of a
4 3 report of dependent adult abuse, the department of human
4 4 services or the department of inspections and appeals
4 5 determines that the case involves discrimination under the
4 6 jurisdiction of the civil rights commission, the relevant
4 7 portions of the case shall be referred to the commission.

4 8 Sec. 7. Section 235B.9, subsection 2, Code 2009, is
4 9 amended to read as follows:

4 10 2. a. Dependent adult abuse reports that are rejected for
4 11 evaluation, assessment, or disposition for failure to meet the
4 12 definition of dependent adult abuse shall be expunged three
4 13 years from the rejection date.

4 14 b. Dependent adult abuse information which is determined
4 15 by a preponderance of the evidence to be unfounded shall be
4 16 expunged ~~one year~~ five years from the date it is determined to
4 17 be unfounded.

4 18 Sec. 8. NEW SECTION. 235B.16A DEPENDENT ADULTS ==
4 19 DEPENDENCY ASSESSMENTS == INTERAGENCY TRAINING.

4 20 1. The dependent adult protective advisory council
4 21 established pursuant to section 235B.1 shall recommend a
4 22 uniform assessment instrument and process for adoption and use
4 23 by the department of human services and other agencies
4 24 involved with assessing a dependent adult's degree of
4 25 dependency and determining whether dependent adult abuse has
4 26 occurred. However, this section shall not apply to dependent
4 27 adult abuse assessments and determinations made under chapter
4 28 235E.

4 29 2. The instrument and process design under subsection 1

4 30 shall address but is not limited to all of the following:
4 31 a. Evaluation of conformity with applicable federal law
4 32 and regulations on the part of the persons employing, housing,
4 33 or providing services to the dependent adult.
4 34 b. Provision for the final step in the dependency
4 35 assessment of a dependent adult to be a formal assessment of
5 1 the existence of risk to the health or safety of the
5 2 individual or of the degree of the individual's impairment in
5 3 ability under the definition of dependent adult in section
5 4 235B.2.
5 5 c. If the assessment under paragraph "b" determines that a
5 6 risk to the health or safety of the individual exists or the
5 7 individual has a significant impairment in ability, and the
5 8 individual being assessed agrees, provision for a case manager
5 9 to be assigned to assist in preparing and implementing a
5 10 safety plan which includes protective services for the
5 11 individual.
5 12 d. If the assessment under paragraph "b" determines that a
5 13 risk to the health or safety of the individual exists or the
5 14 individual has a significant impairment in ability, the
5 15 individual being assessed does not agree to the safety plan
5 16 provisions under paragraph "c" or accept other services, and
5 17 the options available under sections 235B.17, 235B.18, and
5 18 235B.19 are not utilized, provision for the department of
5 19 human services to maintain periodic contact with the
5 20 individual in accordance with rules adopted for this purpose.
5 21 The purpose of the contact is to assess any increased risk or
5 22 impairment and to monitor the individual's goals, feelings,
5 23 and concerns so that the department can intervene when
5 24 necessary or offer services and other support to maintain or
5 25 sustain the individual's safety and independence when the
5 26 individual is ready to agree to a safety plan or accept
5 27 services.

5 28 3. The department of human services and other agencies
5 29 involved with assessing a dependent adult's degree of
5 30 dependency and whether dependent adult abuse has occurred
5 31 shall adopt rules and take other steps necessary to implement
5 32 the uniform assessment instrument and process addressed by
5 33 this section on or before July 1, 2010.

5 34 4. The department of human services shall cooperate with
5 35 the departments of elder affairs, inspections and appeals,
6 1 public health, public safety, and workforce development, the
6 2 civil rights commission, and other state and local agencies
6 3 performing inspections or otherwise visiting residential
6 4 settings where dependent adults live, to regularly provide
6 5 training to the appropriate staff in the agencies concerning
6 6 each agency's procedures involving dependent adults, and to
6 7 build awareness concerning dependent adults and reporting of
6 8 dependent adult abuse.

6 9 EXPLANATION

6 10 This bill relates to regulatory requirements involving
6 11 boarding homes and dependent adults.

6 12 Code section 91A.9, relating to the duties of the
6 13 commissioner of labor, is amended to include the duty of
6 14 developing, in consultation with the United States department
6 15 of labor, a database of the employers in this state utilizing
6 16 special certificates issued by the United States secretary of
6 17 labor as authorized under 29 U.S.C. } 214. The federal law
6 18 authorizes payment of wages below the minimum wage, under
6 19 certain circumstances, for workers with handicaps. The
6 20 commissioner is required to maintain the database.

6 21 New Code chapter 1350 provides for regulation of boarding
6 22 homes by the department of inspections and appeals. Code
6 23 section 10A.104 is amended to include a reference to the new
6 24 Code chapter among the department's duties.

6 25 Code chapter 1350 defines the term "boarding home". The
6 26 owner or lessee of a boarding home is required to register
6 27 with the department and to submit occupancy information. The
6 28 owner or lessee of a boarding home who fails to register or
6 29 comply with reporting requirements is subject to a civil
6 30 penalty of not more than \$500. The department may reduce,
6 31 alter, or waive the penalty. The department is required to
6 32 adopt rules in consultation with the departments of human
6 33 services and public safety. If allegations are received
6 34 concerning a boarding home or the safety of boarding home
6 35 tenants, an interagency approach is required to be used to
7 1 address the allegations. The name of a person who files an
7 2 allegation is kept confidential. If the department or a
7 3 multidisciplinary team has probable cause to believe there is
7 4 a boarding home violation or that dependent adult abuse of an
7 5 individual living in the boarding home has occurred and is

7 6 denied entry to inspect or investigate, upon application, the
7 7 court may enter an order requiring the owner or lessee to
7 8 permit entry and access to the individuals living in the
7 9 boarding home.

7 10 Code chapter 235B, relating to dependent adult abuse
7 11 services administered by the department of human services, is
7 12 amended.

7 13 Under current law, Code section 235B.3, relating to the
7 14 procedure for dependent adult abuse reports, generally
7 15 provides for the reports to be evaluated or assessed by the
7 16 department of human services. An exception under Code chapter
7 17 235E provides for reports involving a health care facility,
7 18 hospital, elder group home, assisted living program, or an
7 19 adult day services program, to be evaluated by the department
7 20 of inspections and appeals. If while either department is
7 21 performing a case evaluation, it is determined the case
7 22 involves various labor and employment matters under the
7 23 jurisdiction of the division of labor services of the
7 24 department of workforce development, the bill requires the
7 25 respective department to refer such portions of the case to
7 26 the division. A similar requirement is included for portions
7 27 of cases involving discrimination under the jurisdiction of
7 28 the civil rights commission.

7 29 Code section 235B.9 requirements involving the period of
7 30 time certain dependent adult abuse information is retained by
7 31 the department of human services, are amended. The bill
7 32 increases the period of time that information determined to be
7 33 unfounded is held before expungement from one year to five
7 34 years and requires rejected reports to be expunged after three
7 35 years.

8 1 New Code section 235B.16A provides for the dependent adult
8 2 protective advisory council to recommend a uniform assessment
8 3 instrument and process for use by the department of human
8 4 services and other agencies involved with assessing a
8 5 dependent adult's degree of dependency and whether dependent
8 6 adult abuse has occurred. The council's membership includes
8 7 various professionals, members of the public, caregivers, and
8 8 the directors or directors' designees of the departments of
8 9 human services, public health, inspections and appeals, and
8 10 elder affairs.

8 11 The uniform instrument and process does not apply to
8 12 facilities and programs for which the department of
8 13 inspections and appeals performs the evaluations under Code
8 14 chapter 235E. The design of the instrument and process is
8 15 required to incorporate various elements, including an
8 16 evaluation of conformity with federal law and regulation by
8 17 those employing, housing, or providing services to the
8 18 individual and a formal assessment of the existence of risk to
8 19 the health or safety of the individual or the degree of the
8 20 individual's impairment in ability to protect the person's own
8 21 interests or to adequately perform or obtain services to meet
8 22 essential human needs, as a result of a physical or mental
8 23 condition which requires assistance from another.

8 24 If a risk exists, development of a safety plan, including
8 25 protective services, is required. Under current law in Code
8 26 section 235B.17, if an individual consents to receipt of
8 27 protective services but the individual's caretaker refuses,
8 28 the department may petition the court to enjoin the caretaker
8 29 from interfering with the protective services. Under Code
8 30 sections 235B.18 and 235B.19, if the individual lacks capacity
8 31 to consent to receipt of protective services or there is an
8 32 immediate danger, the department may petition the court to
8 33 authorize provision of the protective services. The bill
8 34 provides that if these existing law options are not utilized,
8 35 the process for the department of human services to follow
9 1 should include maintaining periodic contact with the
9 2 individual. The purpose of the contact is to monitor the
9 3 individual's goals, feelings, and concerns so that the
9 4 department can intervene as necessary or offer other services
9 5 and other support to maintain or sustain the individual's
9 6 safety and independence when the individual is ready to agree
9 7 to a safety plan or accept services.

9 8 The department of human services and other agencies
9 9 involved with assessing a dependent adult's degree of
9 10 dependency and whether dependent adult abuse has occurred are
9 11 required to adopt rules and take other steps necessary to
9 12 implement the uniform assessment instrument and process on or
9 13 before July 1, 2010.

9 14 New Code section 235B.16A also requires the department of
9 15 human services to cooperate with the departments of elder
9 16 affairs, inspections and appeals, public health, public

9 17 safety, and workforce development, the civil rights
9 18 commission, and other state and local agencies performing
9 19 inspections or otherwise visiting residential settings where
9 20 dependent adults live, to regularly provide training to the
9 21 appropriate staff in the agencies concerning each agency's
9 22 procedures involving dependent adults, and to build awareness
9 23 concerning dependent adults and reporting of dependent adult
9 24 abuse.
9 25 LSB 2692SC 83
9 26 jp/rj/5.2